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In The

# Supreme Court of the United States

October Term, 1998

JOHN GEORGOPOULOS,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

*Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit*

## PETITION FOR WRIT OF CERTIORARI

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30 pp

## QUESTION PRESENTED

Whether the "willfully violate" clause of 29 U.S.C. §186, which prohibits payments from employers to labor union officers, means that in a criminal prosecution under the statute the government must prove that the defendant acted with knowledge that his conduct was unlawful.

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No. _____

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## PETITION FOR WRIT OF CERTIORARI

John Georgopoulos petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

## OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, pages 1a – 7a) is reported at 149 F.3d 169. The oral opinion of the district court (App., *infra*, pages 8a – 12a) is unreported.

## JURISDICTION

The court of appeals entered its judgment on July 24, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATUTORY PROVISIONS INVOLVED

29 U.S.C. §186(d)(2) provides in relevant part, that "any person who wilfully violates this section [which prohibits, with certain exceptions, payments from employers to union officials] shall, upon conviction thereof, be guilty of a felony...."

## STATEMENT

Petitioner Georgopoulos was the President of Local 138 of the International Brotherhood of Teamsters. On May 7, 1996, Mr. Georgopoulos, along with other Local 138 officials, was indicted in the United States District Court for the Eastern District of New York. The indictment charged the defendants with acceptance of gratuities from employers in violation of 29 U.S.C. §186 and conspiring to accept such

payments in violation of 18 U.S.C. §371.

During the second trial of the case, Mr. Georgopoulos requested that the court instruct the jury that in order to establish the "willfully violate" element of 29 U.S.C. §186, the prosecution had to have proven that the defendant had knowledge of the unlawfulness of his conduct and the intent to violate the law. The court declined to give the requested instruction, instead instructing the jury that "willfully violate" meant that the defendant acted intentionally.

The jury convicted Mr. Georgopoulos on both counts. The district court sentenced Mr. Georgopoulos to concurrent terms of imprisonment of 13 months and fined him $6000.

In his appeal to the Second Circuit, Mr. Georgopoulos principally argued that the trial court's instruction on the "willfully violate" element of 29 U.S.C. §186 was erroneous. The court of appeals affirmed, holding that the decisions of this Court in Ratzlaf v. United States, 510 U.S. 135 (1994) and Bryan v. United States, 118 S.Ct. 1939 (1998) did not require the court to depart from its earlier construction of the "willfully violate" language of Section 186. The court had previously interpreted that language as not requiring the prosecution to prove the defendant's knowledge of the unlawfulness of his acts or his intent to violate the law. The court relied on the similar holdings of the majority of other circuit courts which have interpreted Section 186 as well as its reading of the history and language of that statute.

## REASONS FOR GRANTING THE WRIT

1. The Decision of the Second Circuit Court of Appeals is in Conflict with the Decisions of the Seventh Circuit Court of Appeals

This case presents an important issue of statutory interpretation which has divided the circuit courts.

The Second Circuit recognized that its interpretation of Section 186 conflicted with the decisions of the Seventh Circuit. 149 F.3d at 171.

The Seventh Circuit has consistently held that the willfulness language of Section 186 requires the prosecution to prove that a defendant was aware of or recklessly disregarded the illegality of his conduct. United States v. Papia, 910 F.2d 1357, 1362 (7th Cir. 1990); United States v. Kaye, 556 F.2d 855, 863 (7th Cir.1977); United States v. Incisio, 292 F.2d 374, 380 (7th Cir. 1961).

The Second Circuit reaffirmed its earlier decisions interpreting the "willfully violate" language of Section 186, see United States v. Ricciardi, 357 F.2d 91, 99 (2d Cir.), cert. denied, 384 U.S. 942, 86 S.Ct. 1464, 16 L.Ed.2d 840 (1966); United States v. Ryan, 232 F.2d 481 (2d Cir. 1956), continuing to side with the decisions of the Third, Sixth, Ninth, and Eleventh Circuits. See United States v. Pecora, 484 F.2d 1289, 1294 (3d Cir. 1973); United States v. Carter, 311 F.2d 934, 943 (6th Cir.), cert. denied, 373 U.S. 915, 83 S.Ct. 1301, 10 L.Ed.2d 415 (1963); United States v. Bloch, 696 F.2d 1213, 1216 (9th Cir. 1982); United States v. Phillips, 19 F.3d 1565, 1581-82 (11th Cir. 1994), cert.

denied, 514 U.S. 1003, 115 S.Ct. 1312, 131 L.Ed.2d 194 (1995).

The division of the circuit courts is unlikely to resolve itself.

Since the division arose, this Court has issued two decisions interpreting "willfully violate" clauses in federal criminal statutes--Ratzlaf v. United States, 510 U.S. 135, 114 S.Ct. 655, 126 L.Ed.2d 615 (1994) and Bryan v. United States, 118 S.Ct. 1939 (1998). Both decisions held that to "willfully violate" a criminal statute, a defendant must know his conduct is illegal. Nevertheless, the Second Circuit was not persuaded, still insisting that "willfully violate" as it appears in Section 186 does not have that meaning. The Eleventh Circuit reached the same result after the Ratzlaf decision. United States v. Phillips, 19 F.3d 1565, 1581-82 (11th Cir.1994), cert. denied, 514 U.S. 1003, 115 S.Ct. 1312, 131 L.Ed.2d 194 (1995).

The Seventh Circuit is extremely unlikely to change its position, buttressed, as it is, by the Ratzlaf and Bryan decisions.

This Court's intervention is necessary to resolve the conflict in the circuits, thereby assuring uniform interpretation of an essential element of a federal criminal statute.

2. The Decision of the Second Circuit Court of Appeals is Erroneous, Particularly in Light of this Court's Decisions in Ratzlaf v. United States and Bryan v. United States and the Rule of Lenity.

This Court has had occasion to interpret "willfully violate" clauses of criminal statutes twice in the past five years. Both in Ratzlaf v. United States, 510 U.S. 135, 114 S.Ct. 655, 126 L.Ed.2d 615 (1994), which involved the currency structuring statute, and Bryan v. United States, 118 S.Ct. 1939 (1998), which involved the firearms statute, this Court began its analysis with the assumption that "in order to establish a 'willful' violation of a statute, 'the government must prove that the defendant acted with knowledge that his conduct was unlawful.'" Bryan, 118 S.Ct. at 1945 (quoting Ratzlaf, 510 U.S. at 137, 114 S.Ct. at 657). In Ratzlaf, this Court reversed the conviction, holding that to eliminate the knowledge of unlawfulness requirement, as the Ninth Circuit had done in interpreting the currency reporting statute and the Second Circuit did in this case, is to read the willfulness element right out of the statute. 510 U.S. at 140, 114 S.Ct. at 659.

There is no principled basis for interpreting the "willfully violate" language contained in 29 U.S.C. §186 differently than the identical language contained in the currency reporting and firearms statutes involved in Ratzlaf and Bryan and in the other federal criminal statutes which have been interpreted to impose a knowledge of unlawfulness requirement. See United States v. Frade, 709 F.2d 1387, 1392 (11th Cir. 1983) and United States v. Tooker, 957 F.2d 1209 (5th Cir.), cert. denied, 506 U.S. 864, 113 S.Ct. 187, 121 L.Ed.2d 131 (1992) (both interpreting 50 U.S.C. Appx. § 5 (Trading with the Enemy Act)); United States v. Kerley, 838 F.2d 932, 936, 942 (7th Cir. 1988) and United States v. Schmucker, 815 F.2d 413, 421 (6th Cir. 1987)(both interpreting 50 U.S.C. Appx. § 462(a) (criminal penalties provision of Military Selective Service Act)).

Moreover, federal criminal statutes should be interpreted uniformly. At least with regard to the essential elements of an offense, the same word should have the same or similar meaning throughout the United States Code--thereby permitting judges, lawyers, law enforcement officers and average citizens to read a criminal provision of the United States Code and know what it prohibits. See Bryan v. United States, 118 S.Ct. 1939, 1951 (Scalia J. dissenting)("fostering uniformity in the interpretation of criminal statutes" will improve the administration of justice).

The historic principle of lenity dictates that any ambiguity in the meaning of the "willfully violate" language of 29 U.S.C. §186 should be resolved in favor of the defendant. Adamo Wrecking Co. v. United States, 434 U.S. 275, 284, 98 S.Ct. 566, 572, 54 L.Ed.2d 538 (1978)(Rehnquist, J.)(reaffirming principle that "where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant.").

In the face of this Court's definitions of "willfully violate" in Ratzlaf and Bryan and the rule of lenity, the Second Circuit nonetheless insists that the "willfully violate" language of Section 186 does not mean that a defendant must be aware of the unlawfulness of his conduct.

The court based its decision first on the proposition that "'willfully' is a word of many meanings whose construction is often dependent on the context in which it appears." 149 F.3d at 171 (citing Bryan, 118 S.Ct. at 1944-45).

But the Second Circuit omitted the corollary of this proposition, which is that "as a general matter, when used in the criminal context, a 'willful' act is one undertaken with a bad purpose." Bryan, 118 S.Ct. at 1945. If there is an exception to the general rule, it is where a statute prohibits a willful act--which may be defined merely as something intentional. See Browder v. United States, 312 U.S. 335, 341, 61 S.Ct. 599, 603, 85 L.Ed. 862 (1941) (interpreting willful use of a passport in 22 U.S.C. §220 to mean intentional use). But "one cannot willfully violate a statute without knowing what the statute prohibits." United States v. Jain, 93 F.3d 436,440 (8th Cir. 1996), cert. denied, 117 S.Ct. 2452, 138 L.Ed.2d 210 (1997). In sum, although "willful" might mean different things in different contexts, there is no way that a "willful" violation of a statute can mean anything other than acting with knowledge of the unlawfulness of one's conduct.

The Second Circuit also relied on an analysis of the 1984 amendments to Section 186. Those amendments added an additional *mens rea* requirement in a new subsection, 186(d)(1), which applied to technical violations of the prohibition against payments, such as employer contributions to pension funds which were not in compliance with regulatory requirements. For these violations, Congress added to the "willfully violate" requirement the additional requirement that the defendant act with the intent to benefit himself or another person. The court reasoned that this addition showed that "when Congress wished to provide for a heightened *mens rea* requirement... it stated its intentions explicitly." 149 F.3d at 172.

But Congress had already provided for a

"heightened" *mens rea* requirement in the original statute by limiting criminal liability under the statute to those who violate it willfully. In the amendments, Congress left the "willfully violate" language intact. If Congress had meant to impose criminal liability on mere intentional actors it could have substituted the term "knowingly" in the original statute or in the 1984 amendments. It should be presumed that Congress knew what it was doing and meant what it enacted.

The Second Circuit's final rationale for its decision also rested on the 1984 amendments to Section 186. The court assumed that when Congress amended Section 186 in 1984 it must have known that the majority of the circuits had interpreted "willfully" in Section 186 as meaning intentional rather than with knowledge of unlawfulness. By not clearly indicating that the amendment to the statute overruled the cases which had adopted that standard of willfulness, reasoned the court, Congress signaled its approval of that definition. 149 F.3d at 172.

This method of statutory construction does not seem appropriate in criminal cases where the basic principle of lenity prevails. Even if it were appropriate to interpret a criminal statute this way, it would be especially problematic where, as with this issue, the circuits were split. For which interpretation was Congress signaling its approval? If Congress were signaling approval of the majority interpretation, one would expect Congress to send a message to the Seventh Circuit that its interpretation was erroneous. Including the "willfully violate" requirement in the new penalty provision, Section 186(d)(1), and keeping that requirement in the existing penalty provision, Section 186(d)(2), surely did not convey that message. After all,

Congress' familiarity with existing law presumably extended to those cases holding that willfulness is generally accepted as requiring knowledge of unlawfulness. See e.g. United States v. Frade, 709 F.2d 1387, 1390 (11th Cir. 1983) ("[w]hen used in a criminal statute "the word 'willfully' ... generally connotes a voluntary, intentional violation of a known legal duty."). If anything, the 1984 amendments should be read to endorse the Seventh Circuit's interpretation of Section 186.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: October 22, 1998
New York, New York

Respectfully Submitted,

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[1] Counsel for petitioner is scheduled to be admitted to the bar of this Court on November 9, 1998. The Court's admissions office advised that it would be permissible to file this petition, given the pending motion for admission.

No. _____

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## APPENDIX

SW

St. Louis West, Inc. (7388)

**Appendix A**

**[Opinion of the United States Court of Appeals for the Second Circuit, Decided July 24, 1998 [Pages 1a – 7a]**

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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August Term, 1997

(Argued: July 16, 1998* Decided: July 24, 1998)

Docket Nos. 98-1190, 98-1202

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UNITED STATES OF AMERICA,

*Appellee,*

—v.—

JOHN GEORGOPOULOS and ROBERT SKERIES,

*Defendants-Appellants,*

BRADY WINSTEAD,

*Defendant.*

---

Before:

CABRANES and REAVLEY,** *Circuit Judges,*
and JONES,*** *District Judge.*

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* This case was heard pursuant to an order of the Chief Judge of the United States Court of Appeals for the Second Circuit under 28 U.S.C. § 46(b) certifying a judicial emergency.

** The Honorable Thomas M. Reavley of the United States Court of Appeals for the Fifth Circuit, sitting by designation.

*** The Honorable Barbara S. Jones of the United States District Court for the Southern District of New York, sitting by designation.

**Appendix A**
**[Opinion of the USCA for the Second Circuit]**

Defendants-appellants John Georgopoulos and Robert Skeries appeal from a March 27, 1998 judgment of the United States District Court for the Eastern District of New York (Denis R. Hurley, *Judge*) convicting them, after a jury trial, of conspiracy to accept payments as officers of a labor organization, in violation of 18 U.S.C. § 371, and acceptance of payments as officers of a labor organization, in violation of 29 U.S.C. § 186(b). Appellants' principal contention on appeal is that the district court erred in failing to instruct the jury that the "willfulness" element of 29 U.S.C. § 186 requires a finding of specific intent.

Affirmed.

---

JASON SOLOTAROFF, New York, NY, *for Appellant John Georgopoulos.*

SPIROS A. TSIMBINOS, Kew Gardens, NY, *for Appellant Robert Skeries.*

PATRICIA NOTOPOULOS, Assistant United States Attorney, Eastern District of New York (Zachary W. Carter, United States Attorney, David C. James and Emily Berger, Assistant United States Attorneys, on the brief) *for Appellee.*

---

PER CURIAM:

Defendants-appellants John Georgopoulos and Robert Skeries appeal from a March 27, 1998 judgment of the United States District Court for the Eastern District of New

## Appendix A
## [Opinion of the USCA for the Second Circuit]

York (Denis R. Hurley, *Judge*) convicting them, after a jury trial, of conspiracy to accept payments as officers of a labor organization, in violation of 18 U.S.C. § 371, and acceptance of payments as officers of a labor organization, in violation of 29 U.S.C. § 186(b).[1] The district court sentenced each appellant principally to 13 months' imprisonment, three years' supervised release, and a $6,000 fine. Both Georgopoulos and Skeries challenge the sufficiency of the evidence on both counts and the district court's instruction on the willfulness element of the 29 U.S.C. § 186 offense. In addition, Skeries claims that the indictment was "duplicitous" and challenges two of the district court's evidentiary rulings.

We write only to address the appellants' contention that the district court erred in its jury instruction on the "willfulness" element of the substantive crime, 29 U.S.C. § 186 ("Section 186"). The penalty provision applicable to the appellants' conduct, 29 U.S.C. § 186(d)(2),[2] specifies the punishment for those who "willfully violate" Section 186's prohibition against union officials' acceptance of payments from employers. At trial, both appellants asked the district court for a specific intent instruction on "willfulness"—that is, an instruction that the government was required to prove that the appellants had acted with bad purpose and with knowledge that their conduct was unlawful. The district court rejected

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1 29 U.S.C. § 186(a)(1) provides in pertinent part that "[i]t shall be unlawful for any employer . . . to pay . . . any money or other thing of value to any labor organization, or any officer or employee thereof, which represents . . . any of the employees of such employer."

29 U.S.C. § 186(b)(1) provides in pertinent part that "[i]t shall be unlawful for any person to request . . . or accept . . . any payment . . . or other thing of value prohibited by subsection (a) of this section."

2 29 U.S.C. § 186(d)(2) provides in pertinent part that "any person who willfully violates [subsection 186(b)(1)] shall, upon conviction thereof, be guilty of a felony and subject to a fine of not more than $15,000, or imprisoned for not more than five years, or both."

their request, and instead instructed the jury that the government needed only to prove that the appellants' conduct was deliberate and voluntary.

The appellants acknowledge that we have long held that, as used in Section 186, "willfully" does not require a showing of bad purpose or of unlawful intent. *See United States v. Ricciardi*, 357 F.2d 91, 100 (2d Cir.), *cert. denied*, 384 U.S. 942 (1966) *and* 385 U.S. 814 (1966); *United States v. Ryan*, 232 F.2d 481, 482-83 (2d Cir. 1956). Nonetheless, they claim that we are required to revise that holding in light of the Supreme Court's decisions in *Ratzlaf v. United States*, 510 U.S. 135 (1994), and *Bryan v. United States*, ___ U.S. ___, 118 S. Ct. 1939 (1998). In *Ratzlaf*, the Supreme Court held that the "willfulness" element of the antistructuring provision of the Money Laundering Control Act of 1986, 31 U.S.C. § 5324, required a showing that the defendant acted with knowledge that his conduct was unlawful. *See* 510 U.S. at 549. At issue in *Bryan* was the "willfulness" element of 18 U.S.C. § 922(a)(1)(A), as amended by the Firearms Owners' Protection Act in 1986. In its discussion, the Court noted that "*as a general matter*, when used in the criminal context, a 'willful' act is one undertaken with a 'bad purpose.' In other words, in order to establish a 'willful' violation of a statute, the Government must prove that the defendant acted with knowledge that his conduct was unlawful." *Bryan*, 118 S. Ct. at 1945 (emphasis supplied; footnote and internal quotation marks omitted). We do not agree that these decisions require a revision of our longstanding interpretation of the "willfulness" element of Section 186.

First, neither *Ratzlaf* nor *Bryan* disturbed the well-settled proposition that "willfully" is "a word of many meanings whose construction is often dependent on the context in which it appears." *Bryan*, 118 S. Ct. at 1944-45 (internal quotation marks omitted); *see also Ratzlaf*, 510 U.S. at 141

(same). And we, along with the majority of other Circuits to have considered the issue, have consistently held that, in the context of Section 186, "willfully" requires only a finding of general intent. *See United States v. Phillips*, 19 F.3d 1565, 1581-82 (11th Cir. 1994) (decided after *Ratzlaf*), *cert. denied* 514 U.S. 1003 (1995); *United States v. Bloch*, 696 F.2d 1213, 1216 (9th Cir. 1982); *United States v. Pecora*, 484 F.2d 1289, 1294 (3d Cir. 1973); *United States v. Carter*, 311 F.2d 934, 943 (6th Cir.), *cert. denied*, 373 U.S. 915 (1963). *But see United States v. Papia*, 910 F.2d 1357, 1362 (7th Cir. 1990) (willfulness requires "an awareness of or reckless disregard for" Section 186(d)'s restrictions).

Second, the history and structure of Section 186 lend support to our view that the statute requires only a finding of general intent. Section 186 may be broken into five basic components. Subsection 186(a) prohibits employers from making payments to "representatives" of their employees or to union officials. Subsection 186(b) prohibits representatives and union officials from receiving such payments. Subsections 186(c)(1) through (c)(3) set forth certain categorical exceptions to the prohibitions set forth in subsections 186(a) and (b). Subsections 186(c)(4) through (c)(9) identify certain types of payments, particularly contributions to employee trust funds and pension plans, that are permitted if specified requirements are met. Finally, subsections 186(d)(1) and (2) set forth the penalties for violating Section 186.

Until 1984, Section 186 had only one penalty provision, subsection 186(d), which provided that anyone convicted of "willfully violat[ing]" any provision of Section 186 would be guilty of a misdemeanor punishable by a fine of not more than $10,000 and/or by imprisonment of up to one year. Congress ultimately found these penalties "inadequate" to "protect the legitimacy of labor relations" and determined that the "sanctions need[ed] to be made more firm." S. Rep.

No. 98-225 at 297 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3477. Accordingly, in 1984, Congress amended Section 186 so that any violation involving a payment of more than $1,000 would constitute a felony punishable by a fine of up to $15,000 and/or up to five years' imprisonment.

In enacting these increased penalties, however, Congress also "recognize[d] that a wide range of [Section 186] violations do not involve payoffs or bribes, but simply fail to meet the detailed requirements" for the exemptions set forth under subsections 186(c)(4) through (c)(9). *Id.* Accordingly, Congress created a separate penalty provision, subsection 186(d)(1), to deal exclusively with violations involving those exemptions. Subsection 186(d)(1) provides that, to be convicted of violating subsections (c)(4) through (c)(9), one must have acted "willfully and with intent to benefit himself or to benefit other persons *he knows are not permitted to receive a payment . . . under subsections (c)(4) through (c)(9).*" (emphasis supplied). All other violations of Section 186 are addressed in subsection 186(d)(2). Like its predecessor provision, subsection 186(d), which had been in effect since the enactment of Section 186 in 1947, subsection 186(d)(2) requires proof only that an individual acted "willfully."

Two points emerge from this analysis. First, it is clear that when Congress wished to provide for a heightened *mens rea* requirement—as in the case of violations of subsections 186(c)(4) through (9)—it stated its intentions explicitly. Second, at the time that Congress amended Section 186 in 1984—leaving unchanged the *mens rea* requirement for all violations not involving subsections 186(c)(4) through (c)(9)—four Circuits had already interpreted Section 186 to require only a finding of general intent. Because we may assume that Congress was aware of existing law at the time it amended Section 186, *see Miles v. Apex Marine Corp.*,

498 U.S. 19, 32 (1990), we may reasonably conclude that Congress approved of the then-prevalent interpretation of Section 186's "willfulness" element.

For all of these reasons, we adhere to the well-settled law of this Circuit that the "willfulness" element of Section 186 requires only a finding of general intent.

We have considered the appellants' remaining arguments and find them to be without merit.

Accordingly, the judgment of the district court is affirmed.

**Appendix B**
**[Oral Opinion of the United States District Court of the Eastern District of New York [Pages 8a— 12a]**

Colloquy

AFTERNOON SESSION

(The following occurred outside the presence of the jury.)

THE COURT: Firstly, let me rule on this issue that was raised before the luncheon recess.

Having had approximately one hour to make a decision in this regard, my decision is, for the reasons that I'll indicate in a moment, that the Court's charge as originally given in this case during the course of the prior trial correctly states the intent element for a violation of Section 186 of Title 29.

The issue, of course, is whether the appearance of the word "willfully" in Section 186(d) (2) requires the government to prove general intent or whether the government is required to prove specific intent.

Prior to the luncheon recess, when this issue was discussed briefly, there was brief mention of Cheek v United States, 498 U.S. 192 (1991).

In reviewing that case, I do note that the opinion firstly recognizes that the word "willful" does not have the same meaning across-the-board. Its meaning depends on the statutory context in which it is used.

**Appendix B**
**[Oral Opinion of the USDC of the EDNY]**

In Cheek, the definition of "willful," which would dovetail with the request made by Mr. Solotaroff on behalf of Mr. Georgopoulos here, rested in large measure on the complexity of the Internal Revenue code and Congress' desire to have individuals not appropriately charged with a violation of the section unless it was some showing that they realized that what they did was in fact violative of the Internal Revenue code.

The case of Ratzlaf, which is R-a-t-z-l-a-f, Ratzlaf against the United States, 114 Supreme Court 655 (1994) was cited by the defense and it was one of the prime cases urged by the defense. That case, while citing Cheek for the proposition -- let me withdraw that.

That case mentions that the Supreme Court has recognized that the word "willful" is a word of many meanings, and that its construction is often influenced by its context.

The targeted statute in Ratzlaf was the statute which prohibits the structuring of currency transactions with financial institutions so as to avoid the reporting requirements where a deposit in excess of $10,000 is made into a financial institution.

I do note in Ratzlaf, that the Court places some emphasis on the fact that the particular subchapter of the penal statute involved had been interpreted as requiring a specific intent to commit the crime when other subsections of the subchapter were involved.

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And the Court notes that it would be inappropriate to have the word "willful," which appears in various locations in a particular statute, to be interpreted differently. As the Court notes "if courts can render meaning so malleable, the usefulness of a single penalty provision for a group of related code sections will be eviscerated."

More significantly, however, the Supreme Court notes that there are a number of reasons why a person would structure currency transactions and yet not intend to violate the law. The Court cites a host of examples along those lines.

In any event, the Court did conclude that in that case, that "willful" required the government to show a specific intent to violate the law. A specific intent to violate the law indicates that the government would have to prove that the person knew that what they were doing was a violation of law.

A brief effort, and again with the time constraints that's all that could be done over the luncheon recess to shepardize Ratzlaf to determine how it has been applied in other contexts, suggests that the Second Circuit, at least, typically has been unreceptive to interpreting Ratzlaf beyond its application to money structuring transactions.

Obviously this is a very interesting issue. I commend defense counsel for raising it.

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One thing that I've learned is that in the future I will be very careful to enforce my court rule, that requests to charge should be submitted on the first day of the trial. Had that been done here, I might have been able to devote a little more time to this.

But in any event, the point has been raised, it was wise by the defense to raise it, and I feel fairly comfortable with my conclusion.

The conclusion that I reach rests primarily on the rationale espoused by the Eleventh Circuit in United States against Phillips, 19 F. 3d 1565 (Eleventh Circuit 1994).

The issue now before me which apparently has not been the subject of decision by the Second Circuit was an issue of first impression when the matter was presented to the Eleventh Circuit in the Phillips case.

At pages 1576 through to page 1582, the Eleventh Circuit analyzes section 186(d)(2) with respect to the issue of whether a specific intent charge was required because of the fact that the word "willfully" appears in the section.

As part of that analysis, it cites, with approval, the case of United States v Cody, a decision rendered in this circuit in, I believe, 1983.

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In any event, the Court adopts the holding in the Phillips case and the Cody case and therefore declines to charge in the manner requested by defendants. This would be true for both defendants.

MR. TSIMBINOS: Yes, I wanted to make that clear.

THE COURT: With respect to the word "willfully."